

1992 and the Single European Act

By the time this article is printed, "1992" will be recognized worldwide as the symbol of the most ambitious, complex, and fascinating legislative project in the history of international law. In February 1986, the twelve Member States of the European Community (EC)¹ signed the Single European Act (SEA);² on July 1, 1987, it entered into force. The SEA (the Act) consists of four titles, of which title II is by far the most important and far-reaching, since it contains major amendments to the Treaties of Paris and Rome and includes, inter alia, the provisions for the establishment of an internal market in Europe by the end of 1992.

I. Historical Bases of the SEA

Although the idea of a united Europe had been evoked in different ways many times beforehand, the Schuman Plan is widely considered to have been responsible for laying the foundation of today's European economic community.³ Based upon the Schuman Plan, the Treaty of Paris was signed by what was to become known as the Europe of "the Six," i.e., Belgium, France, Germany, Italy, Luxembourg, and the Netherlands. Thus was created the European Coal and Steel Community (ECSC), entering into force on July 23, 1952.⁴

*Partner, The International Business Law Firm P.C., Washington, D.C.

1. The Member States of the EC are: Belgium, Denmark, France, West Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

2. BULLETIN OF THE EUROPEAN COMMUNITIES [BULL. EUR. COMMUN.], Supp. 2/86. The Single European Act is drawn up in a single original composed of ten languages: Danish, Dutch, English, French, German, Greek, Irish, Italian, Spanish, and Portuguese.

3. On May 9, 1950, the French Foreign Minister, Robert Schuman and Jean Monnet presented a plan for the pooling of coal and steel production by France and Germany and any other European country desirous of joining the pool.

4. Office for Official Publications of the European Communities (Luxembourg), *Treaty Establishing the European Coal and Steel Community (Signed in Paris on 18 April 1951)*, in 1 EUROPEAN COMMUNITIES, TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES, TREATIES AMENDING THESE TREATIES, SINGLE EUROPEAN ACT (1987) [hereinafter EUROPEAN COMMUNITIES].

The Treaty of Rome, signed by the Six on March 25, 1957, established the European Economic Community (EEC),⁵ commonly referred to as the Common Market. A second Treaty of Rome signed the same day created the European Atomic Energy Community (EURATOM, of EAEC).⁶ Although the three communities created by these treaties are legally separate, with their own clearly defined fields of activity, many of the institutions are common to all three.⁷ Since the European Economic Community is the most important (with the exception of those specific areas covered by the other two), the three communities are generally jointly referred to as the Common Market, or the EEC.

In the years that followed, the Europe composed of the Six became "the Nine" with the accession of Denmark, Ireland, and the United Kingdom effective on January 1, 1973. The Nine became "the Ten" with the accession of Greece effective on January 1, 1981. The Ten has now become "the Twelve" with the accession of Portugal and Spain effective on January 1, 1986. The progressive increase in the size of the European Communities is likely to continue. Among members of the European Free Trade Agreement (EFTA), Austria has expressed an intention to apply in the first half of 1989, Norway is rumored to be considering another application, and Sweden and Switzerland are also contemplating application.⁸ Turkey has already made its application for membership, which is under consideration.⁹

II. The SEA's Basis in the Treaty of Rome

In its communication to the European Council of January 1, 1987, discussing the implementation of the SEA, the European Commission quoted article 2 of the Treaty of Rome, which provides that the EC should promote "throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability [and] an accelerated raising of the standard of living."¹⁰

The Single European Act is intended to help achieve those general goals by expediting the realization of the objectives expressed in the Treaty of Rome, which include the following:

- (a) Elimination between Member States of customs duties (this has already been accomplished among the Ten and is being phased in over a six- to

5. *Id.*, *Treaty Establishing the European Economic Community*.

6. *Id.*, *Treaty Establishing the European Atomic Energy Community*.

7. *Id.*, *Treaties Revising the Treaties Establishing the European Communities and Acts Relating to the Communities*. The Convention of Mar. 25, 1957, merged the assembly (the European Committee) 1 THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES 809 (1987), into community institutions. By Treaty of Apr. 18, 1965, *id.* at 823, a single Council and single Commission in the Communities were also created.

8. The other members of EFTA are Iceland and Finland.

9. Greenhouse, *As Europe Unites, Outsiders Line Up to Join the Club*, N.Y. Times, Sept. 4, 1988, at E4.

10. BULL. EUR. COMMUN., Supp. 1/87, art. I, first para.

ten-year period by Spain and Portugal).¹¹ V.A.T. and excise duties, however, still differ among the Member States.

(b) Establishment of a common customs tariff and a common commercial policy towards third countries (the EC is the representative for its member countries in the GATT).

(c) Abolition of obstacles to freedom of movement for persons, services, and capital.

(d) Adoption of a common agricultural policy.

(e) Adoption of a common transportation policy.

(f) Ensuring free competition.

(g) Harmonization of laws of the Member States sufficient for the proper functioning of the Common Market.

(h) Application of procedures to coordinate economic policies of Member States and to assure equilibrium in their balance of payments.

(i) Creation of a European Social Fund to improve employment opportunities and help raise the standard of living of Member States.

(j) Establishment of a European Investment Bank.

(k) Association with other countries and territories to promote and increase trade and development.¹²

Some progress has been made towards achieving these goals. With a few notable exceptions, however, such as the elimination of customs duties among the Member States, the process has been rather slow and burdensome. With the enactment of the SEA, the process itself has been changed and progress towards realization of these objectives has sharply accelerated to the point where "1992" has become a buzzword for progress in Europe.

III. Titles I, III and IV of the SEA

Title I of the SEA is general in nature. It is significant in that it continues to build upon the provisions of the Treaty of Rome. Title I's initial paragraph reads as follows: "The European Communities and European Political Cooperation shall have as their objective to contribute together to making concrete progress towards European unity."¹³

Title III (article 30) of the Act is entitled "Provisions on European Cooperation in the Sphere of Foreign Policy." Its aim is to foster a joint formulation and implementation of European foreign policy. To this end, although it speaks in general terms, such as "cooperation," "consultations," and "endeavors,"¹⁴ among the Member States, it is significant in that it provides that the Presidency of European Political Cooperation shall be held by the same Member State as is

11. EUROPEAN COMMUNITIES, *supra* note 4, *Treaty of Accession of Spain and Portugal*.

12. *Id.*, *Treaty Establishing the European Economic Community*, art. 3.

13. BULL. EUR. COMMUN., Supp. 2/86, art. 30.5.

14. *Id.* art. 30.

holding the Presidency of the Council of the Communities at such time.¹⁵ It also provides for consistency in the external policies of the Community and the Political Cooperation, assigning joint responsibility therefore to the Presidency and the EC Commission.¹⁶ Finally, the Presidency must regularly inform the European Parliament of the foreign policy issues being examined within the European Political Cooperation and must see to it that the Parliament's views are considered.¹⁷ Whether these provisions may some day be of major importance remains to be seen. Certainly, without the successful implementation of the internal market provisions of title II, title III cannot achieve its potential.

Title IV of the Act, while reiterating the authority of the European Court of Justice¹⁸ and the treaties of establishment of the Communities,¹⁹ is essentially procedural.

IV. Title II of the SEA

Title II of the SEA is entitled: "Provisions amending the Treaties establishing the European Communities" and is divided into four chapters, the most extensive of which is chapter II.

Article 8A provides the statutory authority for the incorporation of the provisions of the EC Commission's famous White Paper, the document that not only listed the approximately 300 measures remaining to be taken in order to complete the "internal market" in Europe, but provided a timetable for their implementation by the end of 1992.²⁰

The ability of the Council to enact legislation has been greatly enhanced by the SEA. In most cases (with the exception of taxes, recognition of professional qualifications, and labor-management relations), the Council now issues its directives on the basis of decisions taken by a qualified majority, discussed below.²¹ The roles and importance of the Commission and the Parliament have also been substantially strengthened by the Act.

Chapters I and III supplement, respectively, the ECSC Treaty and the EAEC Treaty by adding provisions relative to the European Court of Justice, further defining the power and role of the Council and the European Court of Justice.

15. *Id.* art. 30.10(a).

16. *Id.* art. 30.5

17. *Id.* art. 30.4

18. *Id.* art. 31.

19. *Id.* art. 32.

20. See COMPLETING THE INTERNAL MARKET WHITE PAPER FROM THE COMMISSION TO THE EUROPEAN COUNCIL (Commission of the European Communities, Luxembourg, 1985).

21. See EUROPEAN COMMUNITIES, *supra* note 4, *Treaty of Accession of Spain and Portugal*. The weights accorded to each of the Member States are listed therein as follows: France - 10, Germany - 10, Italy - 10, United Kingdom - 10, Spain - 8, Belgium - 5, Greece - 5, the Netherlands - 5, Portugal - 5, Denmark - 3, Ireland - 3, and Luxembourg - 2. In order for a vote to carry by a qualified majority, 54 votes are necessary; 23 votes constitute a blocking minority.

Chapter IV is entitled "General Provisions." Essentially, it recognizes the phased-in treatment of Spain and Portugal (article 28) and provides for a modification of the Council Decision 85/257/EEC, EURATOM of May 7, 1985, to provide that the level and scale of funding of Community resources will be fixed by decision of the Council acting by a qualified majority (article 29).

Chapter II amends the Treaty establishing the European Economic Community. Chapter II, section I, "Institutional Provisions," clarifies the means by which legislation shall be enacted, essentially providing that the Commission, in cooperation with the European Parliament, shall propose legislation to the Council, which shall then act by qualified majority.²² Section II contains the provisions relating to the foundations and the policy of the Community. It is divided into six subsections, of which subsection I, the internal market provisions, is the most immediate and most substantive in its effects.

(1) "Subsection I—Internal Market," orders the establishment of the internal market by December 31, 1992. It states: "The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."²³

The Commission must report to the Council before December 31, 1988, and again before December 31, 1990, on progress made towards achieving the internal market by the end of 1992. The guidelines and conditions necessary to ensure balanced progress in all the concerned sectors shall be determined by the Council by a qualified majority on a proposal from the Commission.²⁴

Unanimity is still required for the following:

(a) Directives whose implementation involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons.²⁵

(b) The adoption of directives for the harmonization of legislation concerning turnover taxes, excise duties, and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market within the 1992 time limit.²⁶

(2) In this author's opinion, as critical to the realization of a genuine internal market as well as to any aspirations of a European union are the provisions of "Subsection II—Monetary Capacity." The new chapter I to part three, title II of the EEC Treaty is called "Cooperation in economic and monetary policy (Economic and Monetary Union)." The new article 102A reads as follows:

22. BULL. EUR. COMMUN., Supp. 2/86, art. 6.

23. *Id.*; see art. 13 (adding new art. 8A to the EEC Treaty).

24. *Id.* art. 14.

25. *Id.* art. 16 (amending art. 57(2) of the EEC Treaty).

26. *Id.* art. 17 (replacing art. 99 of the EEC Treaty).

1. In order to ensure the convergence of economic and monetary policies which is necessary for the further development of the Community, Member States shall cooperate in accordance with the objectives of Article 104. In so doing, they shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in developing the ECU, and shall respect existing powers in this field.

2. Insofar as further development in the field of economic and monetary policy necessitates institution changes, the provisions of Article 236 shall be applicable. The Monetary Committee and the Committee of Governors of the Central Banks shall also be consulted regarding institutional changes in the monetary area. . . .²⁷

(3) "Subsection III—Social Policy" provides that Member States shall pay particular attention towards improving health and safety of working environments.²⁸ The Council is to adopt directives by a qualified majority on proposals from the Commission in cooperation with the European Parliament and after consulting the Economic and Social Committee. These directives shall set minimum requirements for these improvements.²⁹ The Commission is to try to develop the dialogue between management and labor at the European level that could lead to relations based on agreement.³⁰

(4) "Subsection IV—Economic and Social Cohesion" aims at reducing the disparities between the various regions and the backwardness of the least-favored regions and orders the Commission to propose amendments to the structure and operational rules of the European Agricultural Guidance and Guarantee Fund, Guidance Section, European Social Fund, European Regional Development Fund to achieve these objectives.³¹

(5) "Subsection V—Research and Technological Development" aims to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at the international level. This is done by encouraging small and medium-sized undertakings, research centers and universities, by defining common standards, by opening up of national public contracts, and by removing legal and fiscal barriers thereto. The provisions and programs provided for in this subsection are to be adopted by a qualified majority of the Council on a proposal from the Commission after consulting the Economic and Social Committee and in cooperation with the European Parliament.³²

(6) "Subsection VI—Environment" evoked the concern of the Member States with environmental issues, but defers any specificity to the Council acting in unanimity.³³

27. *Id.* art. 20.

28. *Id.* arts. 21, 29, 22.

29. *Id.* art. 22.

30. *Id.*

31. *Id.* art. 23 (adding tit. V to p. three of the EEC Treaty).

32. *See id.* art. 24 (adding tit. VI to p. three of the EEC Treaty, consisting of arts. 130F, 130G, 130H, 130I, 130K, 130L, 130M, 130N, 130O, 130P, 130Q).

33. *Id.* art. 25 creates a tit. VI to p. three of the EEC Treaty.

V. Conclusion

Since the publication of the White Paper and the enactment of the SEA, the development of new legislation and the passage and implementation thereof has been proceeding on schedule, at a pace few observers believed would be possible. The momentum that has been created appears to have breathed new life into the old continent, but major obstacles will have to be overcome in order for the dreams of those desirous of a united Europe to become reality.

Two critical issues that must be resolved if the EC is to achieve its objectives are those of harmonization of taxes and establishment of a true European central bank and currency. If these major hurdles are overcome, the EC might soon become the single most powerful economic entity in the world. Even if they are not resolved, the model of the "1992 European Experience" has now laid the foundations for future plurilateral and multilateral treatment of international trade, within and without the GATT.

